



House of Representatives

File No. 317

General Assembly

January Session, 2003

(Reprint of File No. 102)

Substitute House Bill No. 6452
As Amended by House
Amended Schedule "A"

Approved by the Legislative Commissioner
April 10, 2003

AN ACT CONCERNING CERTIFICATES OF NEED.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsections (a) to (c), inclusive, of section 19a-638 of the
2 general statutes are repealed and the following is substituted in lieu
3 thereof (*Effective October 1, 2003*):

4 (a) Except as provided in sections 19a-639a to 19a-639c, inclusive:

5 (1) Each health care facility or institution, that intends to (A) transfer
6 all or part of its ownership or control, (B) change the governing powers
7 of the board of a parent company or an affiliate, whatever its
8 designation, or (C) change or transfer the powers or control of a
9 governing or controlling body of an affiliate, shall submit to the office,
10 prior to the proposed date of such transfer or change, a request for
11 permission to undertake such transfer or change.

12 (2) Each health care facility or institution or state health care facility
13 or institution, including any inpatient rehabilitation facility, which
14 intends to introduce any additional function or service into its

15 program of health care shall submit to the office, prior to the proposed
16 date of the institution of such function or service, a request for
17 permission to undertake such function or service.

18 (3) Each health care facility or institution or state health care facility
19 or institution which intends to terminate a health service offered by
20 such facility or institution or [decrease] reduce substantially its total
21 bed capacity, shall submit to the office, prior to the proposed date of
22 such termination or decrease, a request to undertake such termination
23 or decrease.

24 (4) Each applicant, prior to submitting a certificate of need
25 application under this section, section 19a-639 or under both sections,
26 shall submit a request, in writing, for application forms and
27 instructions to the office. The request shall be known as a letter of
28 intent. A letter of intent shall include: (A) The name of the applicant or
29 applicants; (B) a statement indicating whether the application is for a
30 new, replacement or additional facility, service or function, the
31 expansion or relocation of an existing facility, service or function, a
32 change in ownership or control, a termination of a service or a
33 reduction in [licensed] total bed capacity and the bed type, any new or
34 additional beds and their type, a capital expenditure over one million
35 dollars, the acquisition of major medical equipment, imaging
36 equipment or a linear accelerator costing over four hundred thousand
37 dollars, or any combination thereof; (C) the estimated capital cost,
38 value or expenditure; (D) the town where the project is or will be
39 located; and (E) a brief description of the proposed project. The office
40 shall provide public notice of any complete letter of intent submitted
41 under this section, section 19a-639, as amended by this act, or both, by
42 publication in a newspaper having a substantial circulation in the area
43 served or to be served by the applicant. Such notice shall be submitted
44 for publication not later than fifteen business days after a
45 determination that a letter of intent is complete. No certificate of need
46 application will be considered submitted to the office unless a current
47 letter of intent, specific to the proposal and in compliance with this
48 subsection, has been on file with the office at least sixty days. A current

49 letter of intent is a letter of intent which has been on file at the office up
50 to and including one hundred twenty days, except that an applicant
51 may request a one-time extension of a letter of intent of up to an
52 additional thirty days for a maximum total of up to one hundred fifty
53 days if, prior to the expiration of the current letter of intent, the office
54 receives a written request to so extend the letter of intent's current
55 status. The extension request shall fully explain why an extension is
56 requested. The office shall accept or reject the extension request within
57 five business days and shall so notify the applicant.

58 (b) The office shall make such review of a request made pursuant to
59 subdivision (1), (2) or (3) of subsection (a) of this section as it deems
60 necessary. In the case of a proposed transfer of ownership or control,
61 the review shall include, but not be limited to, the financial
62 responsibility and business interests of the transferee and the ability of
63 the institution to continue to provide needed services or, in the case of
64 the introduction of a new or additional function or service expansion
65 or the termination of a service or function, ascertaining the availability
66 of such service or function at other inpatient rehabilitation facilities,
67 health care facilities or institutions or state health care facilities or
68 institutions or other providers within the area to be served, the need
69 for such service or function within such area and any other factors
70 which the office deems relevant to a determination of whether the
71 facility or institution is justified in introducing or terminating such
72 functions or services into or from its program. The office shall grant,
73 modify or deny such request [within] no later than ninety days [of the]
74 after the date of receipt of a complete application, except as provided
75 for in this section. Upon the request of the applicant, the review period
76 may be extended for an additional fifteen days if the office has
77 requested additional information subsequent to the commencement of
78 the review period. The commissioner may extend the review period
79 for a maximum of thirty days if the applicant has not filed in a timely
80 manner information deemed necessary by the office. Failure of the
81 office to act on such request within such review period shall be
82 deemed approval thereof. The ninety-day review period, pursuant to

83 this subsection, for an application filed by a hospital, as defined in
84 section 19a-490, and licensed as a short-term acute-care general
85 hospital or children's hospital by the Department of Public Health or
86 an affiliate of such a hospital or any combination thereof, shall not
87 apply if, in the certificate of need application or request, the hospital or
88 applicant projects either (1) that, for the first three years of operation
89 taken together, the total impact of the proposal on the operating
90 budget of the hospital or an affiliate of such a hospital or any
91 combination thereof will exceed one per cent of the actual operating
92 expenses of the hospital for the most recently completed fiscal year as
93 filed with or determined by the office, or (2) that the total capital
94 expenditure for the project will exceed fifteen million dollars. If the
95 office determines that an application is not subject to the ninety-day
96 review period pursuant to this subsection, it shall remain so excluded
97 for the entire review period of that application, even if the application
98 or circumstances change and the application no longer meets the stated
99 terms of the exclusion. Upon a showing by such facility or institution
100 that the need for such function, service or termination or change of
101 ownership or control is of an emergency nature, in that the function,
102 service or termination or change of ownership or control is necessary
103 to comply with requirements of any federal, state or local health, fire,
104 building or life safety code, the commissioner may waive the letter of
105 intent requirement, provided such request shall be submitted at least
106 ten business days before the proposed date of institution of the
107 function, service or termination or change of ownership or control.

108 (c) (1) The office may hold a public hearing with respect to any
109 complete certificate of need application submitted under this section.
110 At least two weeks' notice of such public hearing shall be given to the
111 applicant, in writing, and to the public by publication in a newspaper
112 having a substantial circulation in the area served by the facility,
113 institution or provider. At the discretion of the office, such hearing
114 may be held in Hartford or in the area so served or to be served. In
115 conducting its activities under this section, section 19a-639, as
116 amended by this act, or under both sections, the office may hold

117 hearings on applications of a similar nature at the same time.

118 (2) The office may hold a public hearing after consideration of
119 criteria that include, but need not be limited to, whether the proposal
120 involves: (A) The provision of a new or additional health care function
121 or service through the use of technology that is new or being
122 introduced into the state; (B) the provision of a new or additional
123 health care function or service that is not provided in either a region
124 designated by the applicant or in the applicant's existing primary
125 service area as defined by the office; or (C) the termination of an
126 existing health care function or service, the reduction of total beds or
127 the closing of a health care facility.

128 (3) The office shall hold a public hearing with respect to any
129 complete certificate of need application submitted to the office under
130 this section if three individuals or an individual representing an entity
131 with five or more people submit a request, in writing, that a public
132 hearing be held on the proposal after the office has published notice of
133 a complete letter of intent.

134 Sec. 2. Subsection (b) of section 19a-639 of the general statutes is
135 repealed and the following is substituted in lieu thereof (*Effective*
136 *October 1, 2003*):

137 [(b) The office shall hold a public hearing with respect to any
138 complete certificate of need request under this section, at least two
139 weeks' notice of which shall be given to the facility, institution or
140 provider by certified mail and to the public by publication in a
141 newspaper having a substantial circulation in the area served by the
142 facility, institution or provider.]

143 (b) (1) The commissioner shall notify the Commissioner of Social
144 Services of any [application] certificate of need request that may
145 impact on expenditures under the state medical assistance program.
146 [Such hearing shall be held at the discretion of the office in Hartford or
147 in the area so served or to be served.] The office shall consider such
148 request in relation to the community or regional need for such capital

149 program or purchase of land, the possible effect on the operating costs
150 of the health care facility or institution and such other relevant factors
151 as the office deems necessary. In approving or modifying such request,
152 the commissioner may not prescribe any condition, such as but not
153 limited to, any condition or limitation on the indebtedness of the
154 facility or institution in connection with a bond issue, the principal
155 amount of any bond issue or any other details or particulars related to
156 the financing of such capital expenditure, not directly related to the
157 scope of such capital program and within control of the facility or
158 institution.

159 (2) An applicant, prior to submitting a certificate of need
160 application, shall submit a request, in writing, for application forms
161 and instructions to the office. The request shall be known as a letter of
162 intent. A letter of intent shall conform to the letter of intent
163 requirements of subdivision (4) of subsection (a) of section 19a-638, as
164 amended by this act. No certificate of need application will be
165 considered submitted to the office unless a current letter of intent,
166 specific to the proposal and in compliance with this subsection, is on
167 file with the office at least sixty days. A current letter of intent is a
168 letter of intent which has been on file at the office no more than one
169 hundred twenty days, except that an applicant may request a one-time
170 extension of a letter of intent of up to an additional thirty days for a
171 maximum total of up to one hundred fifty days if, prior to the
172 expiration of the current letter of intent, the office receives a written
173 request to so extend the letter of intent's current status. The extension
174 request shall fully explain why an extension is requested. The office
175 shall accept or reject the extension request within five business days
176 and shall so notify the applicant. Upon a showing by such facility or
177 institution that the need for such capital program is of an emergency
178 nature, in that the capital expenditure is necessary to comply with any
179 federal, state or local health, fire, building or life safety code, the
180 commissioner may waive the letter of intent requirement, [and that a
181 public hearing be held,] provided such request shall be submitted at
182 least ten business days before the proposed initiation date of the

183 project. The commissioner shall grant, modify or deny such request
184 within ninety days or within ten business days, as the case may be, of
185 receipt thereof, except as provided for in this section. Upon the request
186 of the applicant, the review period may be extended for an additional
187 fifteen days if the office has requested additional information
188 subsequent to the commencement of the review period. The
189 commissioner may extend the review period for a maximum of thirty
190 days if the applicant has not filed, in a timely manner, information
191 deemed necessary by the office. Failure of the office to act thereon
192 within such review period shall be deemed approval of such request.
193 The ninety-day review period, pursuant to this section, for an
194 application filed by a hospital, as defined in section 19a-490, and
195 licensed as a short-term acute-care general hospital or a children's
196 hospital by the Department of Public Health or an affiliate of such a
197 hospital or any combination thereof, shall not apply if, in the certificate
198 of need application or request, the hospital or applicant projects either
199 [(1)] (A) that, for the first three years of operation taken together, the
200 total impact of the proposal on the operating budget of the hospital or
201 an affiliate or any combination thereof will exceed one per cent of the
202 actual operating expenses of the hospital for the most recently
203 completed fiscal year as filed with the office, or [(2)] (B) that the total
204 capital expenditure for the project will exceed fifteen million dollars. If
205 the office determines that an application is not subject to the ninety-
206 day review period pursuant to this subsection, it shall remain so
207 excluded for the entire period of that application, even if the
208 application or circumstances change and the application no longer
209 meets the stated terms of the exclusion. The office shall adopt
210 regulations to establish an expedited hearing process to be used to
211 review requests by any facility or institution for approval of a capital
212 expenditure to establish an energy conservation program or to comply
213 with requirements of any federal, state or local health, fire, building or
214 life safety code or final court order. The office shall adopt regulations
215 in accordance with the provisions of chapter 54 to provide for the
216 waiver of a hearing, for any part of a request by a facility or institution
217 for a capital expenditure, provided such facility or institution and the

218 office agree upon such waiver.

219 (3) The office shall comply with the public notice provisions of
220 subdivision (4) of subsection (a) of section 19a-638, as amended by this
221 act, and shall hold a public hearing with respect to any complete
222 certificate of need application filed under this section, if: (A) The
223 proposal has associated total capital expenditures or total capital costs
224 that exceed twenty million dollars for land, building or nonclinical
225 equipment acquisition, new building construction or building
226 renovation; or (B) the proposal has associated total capital
227 expenditures per unit or total capital costs per unit that exceed one
228 million dollars for major medical equipment, imaging equipment or a
229 linear accelerator, utilizing technology that is new or being introduced
230 into the state; or (C) three individuals or an individual representing an
231 entity comprised of five or more people submit a request, in writing,
232 that a public hearing be held on the proposal. At least two weeks
233 notice of such public hearing shall be given to the applicant, in writing,
234 and to the public by publication in a newspaper having a substantial
235 circulation in the area served by the applicant. At the discretion of the
236 office, such hearing shall be held in Hartford or in the area so served or
237 to be served.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Type	FY 04 \$	FY 05 \$
Office of Health Care Access	General Fund - Cost	\$3,625	\$3,625

Municipal Impact: None

Explanation

The bill requires the Office of Health Care Access (OHCA) to publish notice of each complete letter of intent (LOI) to apply for a certificate of need (CON) under Sections 19a-638 and/or 19a-639 CGS. Approximately \$1,595 in additional costs for publication of notices in newspapers will be incurred in response to this policy change, based on an estimated additional eleven notices annually.

It also allows OHCA to hold a public hearing regarding any complete CON application and publish notice of the same unless it

- (a) involves total capital expenditures or costs that exceed \$20 million for land, building or nonclinical equipment acquisition, new building construction or building renovation,
- (b) has associated total capital expenditures per unit or total capital costs per unit that exceed \$1 million for major medical equipment, imaging equipment or a linear accelerator, using technology that is new or being introduced into the state, or
- (c) three individuals or an individual representing an entity comprised of five or more people request that a public

hearing be held,

in which case a public hearing must be held. An estimated additional fourteen notifications of public hearings will be published annually, at an approximate cost of \$2,030. (It should be noted that removing the mandatory hearing requirement under Section 19a-639 CGS is not anticipated to significantly reduce the number of hearings held annually, since the majority are currently waived in accordance with Section 19a-639(b) CGS.)

Other changes contained in the bill are technical in nature and have no associated fiscal impact.

House "A" requires OHCA to hold public hearings about CON applications under Section 19a-639 CGS when the proposal (a) has associated total capital expenditures or costs that exceed \$20 million for land, building or nonclinical equipment acquisition, new building construction or building renovation, or (b) has associated total capital expenditures per unit or total capital costs per unit that exceed \$1 million for major medical equipment, imaging equipment or a linear accelerator, using technology that is new or being introduced into the state. Under the original bill these hearings would have been optional unless a written request from three individuals or an individual representing an entity comprised of five or more people was received. An additional \$290 in publication costs results as it is estimated that on average two more public hearings will be held annually.

OLR Amended Bill Analysis

sHB 6452 (as amended by House "A")*

AN ACT CONCERNING CERTIFICATES OF NEED**SUMMARY:**

This bill amends the state's certificate of need (CON) process by (1) requiring the Office of Health Care Access (OHCA) to give public notice of completed letters of intent for CON applications and (2) making OHCA public hearings on CON applications optional unless the public requests one or the completed application meets certain criteria specified in the bill.

CON is a regulatory process, administered by OHCA, for review of certain proposed capital expenditures by health care facilities, acquisition of major medical equipment, institution of new services or functions, termination of services, transfer of ownership, and decreases in bed capacity. Generally, a CON is a formal OHCA statement that a health care facility, medical equipment purchase, or service change is needed.

*House Amendment "A" requires OHCA to hold a public hearing on completed CON applications for certain capital expenditures or major medical equipment purchases meeting specified criteria.

EFFECTIVE DATE: October 1, 2003

LETTERS OF INTENT AND PUBLIC NOTICE

By law, the CON process begins when an applicant submits a "letter of intent" to OHCA. A letter of intent must be filed with OHCA before the CON application can be submitted. It must include:

1. the applicant's name;
2. a statement indicating that the CON application is for:
 - (a) a new, replacement, or additional facility, service, or function;

- (b) the expansion or relocation of an existing facility, service, or function;
 - (c) a change in ownership or control;
 - (d) a termination of a service or a reduction in licensed bed capacity and bed type (changed by the bill to a reduction in “total” bed capacity);
 - (e) any new or additional beds and their type;
 - (f) a capital expenditure over \$1 million;
 - (g) acquisition of major medical equipment, imaging equipment, or a linear accelerator costing over \$400,000; or
 - (h) a combination of these;
- 3. the estimated capital cost, value, or expenditure;
 - 4. the town where the project is located; and
 - 5. a brief description of the project.

The bill requires OHCA to give public notice of any complete letter of intent by publishing a notice in a newspaper with a substantial circulation in the area served or to be served by the applicant. The notice must be submitted for publication within 15 days after OHCA determines that the letter of intent is complete. By law, a letter of intent must be on file with OHCA for at least 60 days before a CON application can be considered submitted to OHCA.

PUBLIC HEARINGS ON COMPLETED CON APPLICATIONS

CONs for Capital Expenditures and Major Medical Equipment

Under current law, OHCA is required to hold a public hearing on any complete CON application for capital expenditures over \$1 million or acquisition of major medical equipment over \$400,000. It must give at least two weeks notice of the hearing to the applicant by certified mail and to the public by newspaper publication in a paper having

substantial circulation in the area served by the applicant.

This bill instead requires OHCA to hold a public hearing if (1) the proposal has “associated total capital expenditures” or “total capital costs” exceeding \$20 million for land, building, or nonclinical equipment acquisition, new building construction, or building renovation; (2) the proposal has associated total per unit capital expenditures or capital costs exceeding \$1 million for major medical equipment, imaging equipment, or linear accelerators that use new technology or technology being introduced to the state; or (3) three individuals or one individual representing an entity of five or more people ask for it in writing.

If OHCA holds a hearing, the bill requires that (1) the applicant receive two weeks written notice of the public hearing and (2) the public receive the same two weeks notice through a newspaper of substantial circulation in the applicant’s service area. The hearing must be held in Hartford or in the area to be served at OHCA’s discretion.

CONs for New Functions or Services, Termination of Services, Transfer of Ownership, Decreases in Bed Capacity

The bill explicitly allows OHCA to hold a public hearing on a complete CON application involving institution of new services or functions, termination of services, transfer of ownership or control, or a substantial decrease in bed capacity. Hearing notice must be given to (1) the CON applicant in writing and (2) the public through a newspaper with substantial circulation in the applicant’s service area. The bill allows OHCA to hold the hearing in Hartford or in the area to be served.

In deciding whether to hold a hearing, the bill requires OHCA to consider, at a minimum, whether the CON proposal involves (1) new or additional health care functions or services through use of new technology or technology being introduced into the state; (2) new or additional health care functions or services not provided in a region designated by the applicant or in its existing primary service area as defined by OHCA; or (3) termination of an existing health care function or service, reduction of total beds, or a facility’s closing.

Under the bill, OHCA must hold a public hearing on a completed CON application if three individuals or one representing an entity

with five or more people submit a written request for a public hearing after publication of the notice of the complete letter of intent.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 21 Nay 0